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Administrative Appeal Decision - Said, Richard A (2020-02-04)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Said, Richard

Facility: Wende CF

NYSID: [REDACTED]

Appeal Control No.: 06-030-19 B

DIN: 18-B-3338

Appearances: Richard Said, 18-B-3338
Wende Correctional Facility
3040 Wende Road
Alden, NY 14004-1187

Decision appealed: May 2019 decision, denying discretionary release and imposing a hold of 13 months.

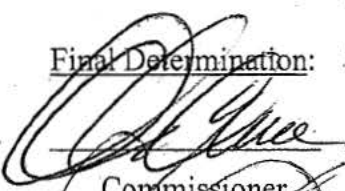
Board Member(s) who participated: Crangle, Coppola

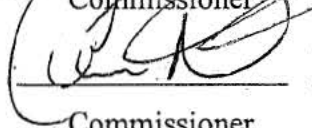
Papers considered: Appellant's Brief received September 16, 2019

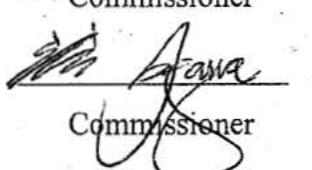
Appeals Unit Review: Statement of the Appeals Unit's Findings and Recommendation

Records relied upon: Pre-Sentence Investigation Report, Parole Board Report, Interview Transcript, Parole Board Release Decision Notice (Form 9026), COMPAS instrument, Offender Case Plan.


Final Determination: The undersigned determine that the decision appealed is hereby:

 ☒ Affirmed ☐ Vacated, remanded for de novo interview ☐ Modified to _____
Commissioner

 ☐ Affirmed ☐ Vacated, remanded for de novo interview ☐ Modified to _____
Commissioner

 ☒ Affirmed ☐ Vacated, remanded for de novo interview ☐ Modified to _____
Commissioner

If the Final Determination is at variance with Findings and Recommendation of Appeals Unit, written reasons for the Parole Board's determination must be annexed hereto.

This Final Determination, the related Statement of the Appeals Unit's Findings and the separate findings of the Parole Board, if any, were mailed to the Inmate and the Inmate's Counsel, if any, on 2/4/2020 .

Distribution: Appeals Unit – Appellant – Appellant's Counsel – Inst. Parole File – Central File
P-2002(B) (11/2018)

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Said, Richard

DIN: 18-B-3338

Facility: Wende CF

AC No.: 06-030-19 B

Findings: (Page 1 of 1)

Appellant was sentenced to two to four years upon his conviction of Aggravated Criminal Contempt. In the instant appeal, Appellant challenges the May 2019 determination of the Board denying release and imposing a 13-month hold on the following grounds: (1) Appellant was denied [REDACTED] and as a result could not understand or meaningfully participate in the interview; and (2) relevant information was not available for consideration because he was not afforded the opportunity to present an affidavit from the complainant recanting her statements. These arguments are without merit.

Appellant did not preserve his first claim by raising an objection at the parole interview. Matter of Morrison v. Evans, 81 A.D.3d 1073, 916 N.Y.S.2d 655 (3d Dept. 2011); Matter of Vanier v. Travis, 274 A.D.2d 797, 711 N.Y.S.2d 920 (3d Dept. 2000). In any event, based on a review of the record, Appellant was provided with a pocket talker for the parole interview. Moreover, the interview transcript does not indicate Appellant could not understand or there was any impediment.

In addition, Appellant was free to present the affidavit for the Board's consideration. We also note information about the affidavit – which appears to relate to a prior conviction – was included in an official defense attorney statement considered by the Board. But to the extent Appellant suggests the Board relied on erroneous information concerning the instant offense, the Board is obligated to rely upon Appellant's conviction and assume his guilt in making its determination. Executive Law § 259-i; 9 N.Y.C.R.R. §§ 8001.3 and 8002.1, *et seq.*; Matter of Silmon v. Travis, 95 N.Y.2d 470, 476-77, 718 N.Y.S.2d 704, 707-708 (2000); Matter of Vigliotti v. State Executive Div. of Parole, 98 A.D.3d 789, 950 N.Y.S.2d 619 (3d Dept. 2012). Appellant also acknowledged violating the order of protection during his parole release interview.

Recommendation: Affirm.